



proximity to a river reach below one of the five storage reservoirs in the Yakima Basin, the proposed action is fairly straightforward – BOR would release water from the associated reservoir to fully obviate the effects of the associated withdrawal. Where a water withdrawal is located in a tributary, BOR would still release water from one or more of the reservoirs in a manner that would ensure that the exercise of the new water right is not less than neutral at Parker (a control point downstream of the confluence of the Yakima and Naches Rivers). In addition, DOE will ensure that such tributary diversions do not exceed 1% of the unregulated low flow of the affected tributary. Under certain circumstances, up to 1/3 of the water procured by DOE would be made available to improve instream flows in the Yakima River mainstem.

This document considers the potential effects of the proposed action on MCR steelhead and their designated critical habitat. MCR steelhead were listed as threatened on March 25, 1999 (64 FR 14517) and their status was reaffirmed on June 28, 2005 (70 FR 37160). Critical habitat was designated on September 2, 2005 (70 FR 52630).

Species Determination

Middle Columbia River Steelhead

The proposed action will occur in the Yakima and Naches River watersheds. MCR steelhead spawn and rear in the mainstems of each river, and in many of their tributaries. It is likely that water transactions will occur in mainstem reaches and tributaries that are occupied by MCR steelhead. However, all new mainstem diversions from either the Yakima or Naches will be fully offset by reservoir management changes that would obviate any decreases in stream flow during low flow periods. In addition, any new tributary water uses will be limited to a total of not more than 1% of that tributary's unregulated base flow and the new water use will be rendered water budget neutral at Parker. Therefore, the maximum net effect of the proposed action to instream flow is 1% of the unregulated base flow of any tributary from the point at which the effect of the diversion is expressed (NMFS expects that the vast majority of "diversions" will in fact be ground water withdrawals) downstream to the confluence with a mainstem. Any surface diversions associated with the exchange program will be properly screened. Because the maximum rate of flow depletion will cumulatively not exceed 1% of base flow of any affected tributary reach, NMFS expects the effects of the action to stream flows, and in turn MCR steelhead, will be insignificant.

Accordingly, NMFS concurs with the BOR determination of "may affect, not likely to adversely affect" for MCR steelhead.

Critical Habitat Determination

Middle Columbia River Steelhead

Critical habitat includes the stream channels within the delineated stream reaches, and includes a lateral extent as defined by the ordinary high water line of those stream reaches (33 CFR

319.11). Within the action area, the Yakima and Naches Rivers as well as most of the tributaries potentially involved in the water exchange program are included in the designated critical habitat. Because the action will occur in freshwater habitats that are used by MCR steelhead for spawning, rearing, and migration, the potential for the action to appreciably reduce the functions of designated habitats for those purposes is germane to this analysis.

Because the water exchange requires a minimum of water neutrality in the mainstems and strictly limits tributary flow reductions, it is highly unlikely that the action will degrade migratory conditions. As steelhead spawn in the spring when flows are generally robust, it is highly unlikely that the small amount of withdrawal enabled by the proposed action will reduce spawning habitat area. Finally, limiting tributary withdrawals covered by the program to cumulatively not more than 1% of base flow makes it unlikely that the action would significantly reduce rearing habitat area or quality. Accordingly, NMFS concurs with the BOR determination that the proposed action will not adversely affect designated critical habitat.

This concludes informal consultation on these actions in accordance with 50 CFR 402.14(b)(1). The BOR must re-analyze this ESA consultation if: (1) New information reveals effects of the action that may affect listed species in a way not previously considered; (2) The action is modified in a manner that causes an effect to the listed species or designated critical habitat that was not previously considered; or (3) A new species is listed, or critical habitat designated, that may be affected by the identified actions.

Magnuson-Stevens Fishery Conservation and Management Act

Federal agencies are required, under 305(b)(2) of the MSA and its implementing regulations (50 CFR 600 Subpart K), to consult with NMFS regarding actions that are authorized, funded, or undertaken by that agency that may adversely affect Essential Fish Habitat (EFH). The MSA (3) defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." If an action would adversely affect EFH, NMFS is required to provide the Federal action agency with EFH conservation recommendations (MSA 305(b)(4)(A)). This consultation is based, in part, on information provided by the Federal action agency and descriptions of EFH for Pacific salmon contained in Appendix A to Amendment 14 to the Pacific Coast Salmon Plan (August 1999) developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce (September 27, 2000).

The project action area has been designated as EFH for various life stages of Chinook (*O. tshawytscha*) and coho (*O. kisutch*) salmon.

Because the habitat requirements (i.e., EFH) for MSA-listed salmon in the project area are similar to those of the MCR steelhead, and because the project minimization measures and conservation measures that are included as part of the proposed action to address ESA concerns are also adequate to avoid, minimize, or otherwise offset potential adverse effects to designated EFH, conservation recommendations pursuant to MSA (305(b)(4)(A)) are not necessary.

Since NMFS is not providing conservation recommendations at this time, no 30-day response from the BOR is required (MSA 305(b)(4)(B)).

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations, the BOR will need to reinitiate EFH consultation with NMFS in accordance with NMFS implementing regulations for EFH at 50 CFR 600.920(l).

Thank you for your efforts to protect ESA listed Middle Columbia River steelhead and their critical habitat. If you have any questions regarding either the ESA or EFH consultation, please contact Dale Bambrick of the Washington State Habitat Office at (509) 962-8911 x 221 or email at dale.bambrick@noaa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Matt Ingraham" followed by a small "for" and a flourish.

D. Robert Lohn
Regional Administrator

Cc: Scott Willey (BOR, Yakima)